



SOCIAL SECURITY

Office of Budget, Finance and Management

April 7, 2011

Mr. Daniel Werfel
Controller
Office of Federal Financial Management
The Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Dear Mr. Werfel:

This letter responds to your request for the Social Security Administration's contingency plan for continued activities during a potential lapse in Federal appropriations and resulting partial shutdown of agency operations. Because of the fluidity of the situation, we will reevaluate and adjust our plan as necessary. I have enclosed a chart setting forth our proposed employee count by agency component, as well as a brief description of the functions those employees will perform. This letter further explains our legal basis for conducting those functions during a partial shutdown.

As you know, Social Security touches the lives of every American, often during difficult times of personal hardship, transition, and uncertainty. We serve the public through a network of 85,000 Federal and State employees who work in offices across the country and even the world. Each day almost 180,000 Americans visit our field offices. Many of these people come to our offices for scheduled appointments often made weeks in advance, and some visitors must travel a significant distance. Over 450,000 people call us every day for a variety of services such as filing claims, asking questions, and changing direct deposit information. All of these numbers will likely spike as Americans who depend on benefits become increasingly uncertain about what services we will provide during a shutdown.

Our annual numbers are even more staggering. During fiscal year 2010, we paid 58 million Americans over \$740 billion in benefits. Specifically, we paid \$572.5 billion in Old Age and Survivor benefits, \$122.9 billion in Disability benefits and \$47.2 billion in Supplemental Security Income payments. During this same time, we received 45 million visitors to our field offices, conducted almost 68 million transactions over our 800 number telephone system, and held over 737,000 disability hearings.

In considering our legal obligations and responsibilities during a funding lapse, we have conferred closely with our General Counsel, who has approved our plan. We have reviewed carefully the relevant Attorney General and Office of Legal Counsel Opinions, in particular the 1981 opinion from Attorney General Civiletti (the 1981 Opinion), as modified by the 1995 memorandum from the Office of Legal Counsel (the 1995 Memorandum). We have also considered how we responded to the lapse in appropriations in 1995-96.

We understand that during a lapse in appropriations, we must cease all activity for which our annual funding has expired, unless an exception to the Antideficiency Act applies. Three significant exceptions apply to our work: the protection of life and property exception, the wind-down activities exception, and the "necessary implication" exception. This exception allows a limited number of Government functions funded through annual appropriations to continue despite a lapse in their appropriations because the lawful continuation of other activities necessarily implies that these functions continue as well.¹

Our principal mission is to deliver Social Security services to the public. We administer the Old Age, Survivors and Disability Insurance programs under Title II of the Social Security Act (Act), the Supplemental Security Income (SSI) program in Title XVI of the Act, and portions of the Medicare program under Title XVIII of the Act. Funding for the benefits provided by these programs will continue even in the event of a general lapse in appropriations. Title II and Title XVIII benefits are funded indefinitely through trust funds. SSI benefits are funded through general revenues, but the current Continuing Resolution (CR) funds those benefits for 30 calendar days after the CR expires. Since there is funding to pay these benefits, the necessary implication exception would allow us to perform those activities needed to ensure that benefits are accurately and timely paid, despite a lapse in appropriations.

We reviewed the January 23, 1996 memorandum to the Office of Management and Budget from former Commissioner Chater as a starting point for determining which service functions we must continue, and the number of employees needed to perform those functions. As Commissioner Chater explained then, and as remains true today, not only must we continue those functions that would enable us to pay benefits in a particular month, we must also perform those functions necessary for making accurate payments and appropriately managing benefit programs supported by our trust funds over the long term. Continuing a broad category of functions related to making accurate payments during a lapse in appropriations is consistent with our January 1996 plan and is legally justified under the 1981 Opinion that permits us to "continue the administration of the program[s] to the extent of the remaining benefit funding." 43 U.S. Op. Atty. Gen. 293, 307 (1981).

The enclosed charts detail the critical functions we would continue and the approximate numbers of employees who would work during a lapse. We will keep on duty those employees providing front-line services to our beneficiaries and claimants. Our Operations component serves claimants in nearly 1,300 field offices and processing centers nationwide. We will limit the services we provide during the lapse to those needed to ensure that we pay benefits accurately and timely over the long term. For example, we will continue taking and adjudicating applications and processing appeals. However, we will not provide other services that the public has come to expect, such as issuing new and replacement Social Security cards and updating

¹ The 1995 Memorandum specifically notes that the activities necessary for disbursing Social Security benefits that "operate under indefinite appropriations" are examples of activities permitted by necessary implication.

earnings records. In addition, we will reduce the hours we are open to the public to ensure we complete services without the need for overtime.

If we were to discontinue those benefit-related critical functions for even a day or two, we would create a backlog of tens of thousands of claims, which would jeopardize our ability to appropriately administer the funded benefits programs and trust funds. Therefore, we will retain the minimum front-line staff in our field offices necessary to conduct the functions described previously. We will except only those employees who primarily provide or support claimant services. All other Operations employees will not be excepted.

We will authorize State disability determination services (DDS) to continue limited services during a lapse. The DDSs make medical determinations on our disability claims. We fully fund the DDSs, but the DDS employees are State employees. The DDSs are an integral part of our claims processing; without their contributions, we would be unable to adjudicate our disability claims. Therefore, during a lapse in appropriations, we will authorize the DDSs to continue claims processing activities.

Conducting hearings to decide claimant appeals of initial decisions is another critical aspect of ensuring that we pay benefits accurately and timely. Accordingly, Administrative Law Judges will continue to hear and decide cases in the Office of Disability Adjudication and Review (ODAR). All other ODAR employees will not be excepted.

While we recognize the importance of each of our employees, we also recognize the limited scope of our authority and the realities of the fiscal situation. In addition to the operational components described above, we will retain a very limited number of employees not involved in direct service, but whose work and oversight are critical to support our direct-service operations. We will limit our non-direct-service employees to those without whom our operations activities cannot continue. We will retain a limited number of human resources professionals to handle payroll and employee issues, information systems personnel to keep our systems functioning, and attorneys to ensure the services we provide conform to the law and to provide required litigation services in the Federal courts.

We will also retain a limited number of employees under the protection of property exception set forth in the Antideficiency Act. Specifically, we will retain those employees required to operate the buildings in which employees are engaged in excepted work. The General Services Administration has delegated authority to us to operate and maintain a number of buildings, including our two data centers. Accordingly, our chart excepts 5 employees from the Office of Operations and 37 personnel from the Office of Budget, Finance and Management for the preservation of these properties. We have excepted only those employees minimally necessary to conduct essential utility services, such as electrical, plumbing, heating and air conditioning. We will provide repairs and maintenance necessary to safely maintain building operations, deferring other maintenance operations until after we receive an appropriation.

The Antideficiency Act also authorizes agencies to continue the employment of those personnel necessary for ensuring the safety of human life, such as guards and law enforcement officers. In recent years, we have seen an increase in violence and threats of violence in our offices. Given that a shutdown will limit service to the public, we anticipate that threats will elevate due to public frustration with the shutdown. Our Office of the Inspector General (OIG) has the authority to respond to and investigate these incidents under the Social Security Protection Act, which criminalizes threats against SSA employees in the performance of their official duties.

Thus, OIG has determined that it will except 300 law enforcement staff to serve as primary responders to threat incidents and will coordinate with local law enforcement and the Federal Protective Service to ensure the safety of our employees.

As President Franklin D. Roosevelt recognized over 75 years ago when the Social Security Act became the law, it is the "plain duty" of the Federal Government "to provide for the security upon which welfare depends." We are committed to honoring that "plain duty" by ensuring that, consistent with the constraints of a partial shutdown, the American people receive the benefits they are due. We are confident that our plan both conforms to applicable law, regulation, and guidance, and serves the American people in these difficult times.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael G. Gallagher", written in a cursive style.

Michael G. Gallagher
Deputy Commissioner
for Budget, Finance and Management

Enclosure

cc:

Michael J. Astrue, Commissioner
Carolyn W. Colvin, Deputy Commissioner
David Black, General Counsel

CONTINGENCY PLAN

Status of Service Activities During a Funding Lapse

To promote service to the public and fiscal responsibility, we will implement the following plan:

I. Operations Field Offices (FO)

Continued FO Activities	Discontinued FO Activities
<ul style="list-style-type: none"> • Applications for benefits (including appointments) • Requests for appeals (reconsiderations, hearings, and Appeals Council) • Normal post-entitlement actions (change of address, Supplemental Security Income living arrangement changes, non-citizen verification/changes, direct deposit, death inputs, etc) • Non-receipts and critical payments • Payee changes • Critical information technology (IT) support for daily processing activities 	<ul style="list-style-type: none"> • Original and replacement Social Security cards • Benefit verifications • Earnings record corrections and updates • Payee accountings • Completing program integrity workloads (redeterminations, continuing disability reviews (CDR), overpayments) • Prisoner activities • Requests from third parties for queries • Request for Numi-lites (i.e., Social Security number verifications) • Freedom of Information Act (FOIA) requests • IT enhancement activities, public relations, and training • Replacement Medicare Cards

II. State Disability Determination Services (DDS)

Continued DDS Activities	Discontinued DDS Activities
<ul style="list-style-type: none"> • Initial claims, including: terminally ill, compassionate allowances, quick disability determinations, dire need, and wounded warriors • Reconsiderations • Critical IT support for daily processing activities 	<ul style="list-style-type: none"> • CDRs • Assistance requests for hearings • End-of-line quality assurance reviews • IT enhancement activities, public relations, and training

III. Office of Disability Adjudication and Review

Continued Activities	Discontinued Activities
<ul style="list-style-type: none">• Hearing cases• Deciding cases	<ul style="list-style-type: none">• Screening cases for On-the-Record decisions• Scheduling hearings• Hearing appeals• Docketing and tracking new cases• Drafting relevant notices for claimants• Preparing electronic records for claimants and representatives• Identifying missing evidence and developing the record• Exhibiting case files for Administrative Law Judges• Quality assurance review activities• Adding new medical and vocational experts to blanket purchase agreement• Decision-writing• Processing bias complaints from claimants and representatives• Responding to congressional inquiries regarding support for casework on constituent hearings and appeals• Conducting all activities dependent on Operations support, including enrollment of appointed representatives for eFolder access• Responding to FOIA requests and public inquiries• Providing training and IT support or enhancements for Hearing Offices

The table on the attached page reports our planned personnel on duty to perform these functions.

SSA STAFF ON DUTY EXCEPTIONS AND FURLOUGHS					
OFFICE	TOTAL	REQUIRED FOR WIND- DOWN	EXCEPTIONS	AUTHORITY FOR EXCEPTIONS	FURLOUGHS
Commissioner	56	0	7	Necessary Implication – 5 Senate-confirmed Presidential Appointee – 2	49
Chief Information Officer	146	0	3	Protection of Property – 1 Necessary Implication - 2	143
Actuary	56	0	0		56
Communications	175	0	5	Necessary Implication – 5	170
General Counsel	673	0	57	Necessary Implication - 57	616
Operations	48,327	0	44,980	Necessary Implication – 44,975 Protection of Property - 5	3,347
Budget, Finance, & Management	1,108	137	82	Protection of Property – 37 Necessary Implication - 45	1,026
Quality Performance	1,301	0	11	Necessary Implication - 11	1,290
Systems	3,365	0	302	Necessary Implication - 302	3,063
Human Resources	723	15	17	Necessary Implication - 17	706
Retirement & Disability Policy	703	0	5	Necessary Implication - 5	698
Disability Adjudication & Review	10,758	0	1,408	Necessary Implication - 1,408	9,350
Legislation & Congressional Affairs	58	0	4	Necessary Implication – 4	54
Inspector General	579	1	301	Safety of Human Life - 300 Senate -confirmed Presidential Appointee - 1	278
TOTAL	68,028	153	47,182		20,846

Note: An additional 17,992 State disability determination services employees will be on board supporting agency operations during the shutdown.